

APPEAL NO. 040755
FILED MAY 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 15, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter from December 16, 2003, through March 15, 2004. The claimant appealed, arguing that he did not receive notice of the dates of the qualifying period prior to the date it began and therefore was automatically disqualified because he did not know the dates to begin looking for employment. The claimant attached correspondence from the Texas Workers' Compensation Commission (Commission) which was not in evidence at the CCH. The respondent (carrier) responded, arguing that the claimant's contention on appeal was not argued at the CCH and should not be considered on appeal. The carrier further urges that the determinations made by the hearing officer were supported by the evidence and should be affirmed.

DECISION

Affirmed.

The claimant attached correspondence from the Commission to his appeal, which was not admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

The requirements for entitlement to SIBs are set out in Section 408.142 and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on June 4, 2001, with an IR of 44%; that he did not commute his impairment income benefits; that the qualifying period for the first quarter of SIBs was from September 3 through December 2, 2003; that the claimant

had no earnings during the relevant qualifying period; and that the claimant did not seek employment during the qualifying period for the first quarter of SIBs. With regard to the required "good faith" requirement, the hearing officer was not satisfied that the claimant proved that he had no ability to work in any capacity during the qualifying period for the first quarter of SIBs. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer found that the claimant did not provide a narrative which specifically explained how the claimant's injury caused a total inability to work as required by Rule 130.102(d)(4). Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination, or the determination that the claimant is not entitled to SIBs for the first quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge